



TULANE ENVIRONMENTAL LAW CLINIC

June 21, 2016

By U.S. mail and EMAIL: honker.william@epa.gov

157-049

William Honker

U.S. Environmental Protection Agency, Region 6

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RE: Request for Reconsideration of June 3, 2016, Approval of LDEQ's Amendments to the Water Quality Regulations regarding Dissolved Oxygen Criteria for Water Quality Subsegments in the Eastern Lower Mississippi River Alluvial Plains Ecoregion (LAC 33:IX.1123.Table 3) (WQ091)

Dear Mr. Honker:

On behalf of the Gulf Restoration Network (GRN), Little Tchefuncte River Association (LTRA), Louisiana Environmental Action Network (LEAN), Sierra Club Delta Chapter, and the Louisiana Audubon Council (collectively "Citizen Groups"), we request that EPA reconsider its June 3, 2016, decision to approve Louisiana's proposal to drastically lower the Dissolved Oxygen (DO) criterion for thirty-one waterbodies in the Eastern Lower Mississippi River Alluvial Plans Ecoregion ("Eastern LMRAP"). Citizen Groups received new information which supports their argument that Subsegments 040807 and 040801 are currently and consistently meeting the 5.0 mg/L DO standard year-round, necessitating a partial disapproval.

Citizen Groups had previously submitted to EPA data from monitoring LDEQ itself conducted demonstrating that a number of the waterbodies in the Ecoregion were consistently meeting the 5.0 mg/L DO criterion year-round. One of these waterbodies was the Tchefuncte River in new subsegment 040807.

Now, recent comprehensive monitoring data has just been compiled by the Lake Pontchartrain Basin Foundation of Dissolved Oxygen levels (and other parameters) in subsegments 040807 and 040801 (both the Tchefuncte River). That data is attached as Exhibit A. The data was taken by the Foundation in three different testing sites in the Tchefuncte River over a three-year period from 2014 through 2016. Citizen Groups also attach two maps, prepared by Matthew Allen of the Little Tchefuncte River Association, that depict the location of the three testing sites in the Tchefuncte River. Exhibits B and C.¹

¹ Both maps, and the Basin Foundation's document, refer to the waterbody in subsegments 040801 and 040807 as the Little Tchefuncte River, as locals reference it at that location. LDEQ refers to the waterbody in these subsegments as simply the Tchefuncte River.

As the maps demonstrate, one site is in current subsegment 040801 and two are in new subsegment 040807 (formerly part of 040801). The data demonstrate that the Tchefuncte River in these two subsegments consistently achieves 5.0 mg/L year-round, and thus this data builds on and substantiates the LDEQ monitoring data Citizen Groups previously submitted to EPA which also shows the Tchefuncte is meeting 5.0 mg/L DO in these subsegments. *See* March 8, 2016, Citizen Group letter to EPA, Exhibits D and E. Further, both subsegments are designated Scenic Streams, and Outstanding Natural Resource Waters. *See* LAC 33.IX.1123, Table 3 (as amended by WQ091).

Citizen Groups reviewed EPA's June 3, 2016, decision to approve these DO changes. We note that EPA disregarded the monitoring data Citizen Groups had previously presented showing that many of these waterbodies were consistently meeting 5.0 mg/L year-round. EPA's explanation was that the monitoring data Citizen Groups submitted (and LDEQ compiled) was ambient monitoring, taken as periodic grab samples, which EPA characterized as "not as scientifically stringent as" the continuous monitoring data used to develop the criteria. June 3, 2016, letter at 7. However, the continuous monitoring data LDEQ used to develop this criterion was not taken in the Tchefuncte River. The "scientifically stringent" continuous monitoring data to which EPA refers was taken in other "reference" waterbodies nowhere near the Tchefuncte River, as demonstrated by Exhibit C to Citizen Groups' March 8, 2016, letter to EPA. The nearest reference waterbody data relied on by LDEQ are at Pass Manchac, a wide waterbody which connects two large oligohaline lakes, nothing like the spring and groundwater-fed freshwater waterbodies which constitute the Tchefuncte and many of the other waterbodies north of Lake Pontchartrain. Additionally, Pass Manchac is not a Scenic Stream or Outstanding Natural Resource waterbody.

Even if, all things being equal, properly conducted continuous monitoring data is preferable over grab sampling ambient monitoring data, all things are not equal with respect to the data used to justify lowering the DO on the Tchefuncte and other Northshore waterbodies.² EPA provided no explanation for its preference for extrapolated limited continuous monitoring data on waterbodies far away from the Tchefuncte over decades of LDEQ ambient monitoring data on the Tchefuncte. If EPA has data or a policy which justifies this position, Citizen Groups request that it provide this documentation and allow comment on it. Regardless, the new Lake Pontchartrain Basin Foundation monitoring data represents three years of additional rigorous monitoring data which cannot be ignored.

Finally, the invalid science used to justify this criteria change additionally calls into question the entire methodology relied on by LDEQ and EPA; that is, the January 10, 2008, Memorandum of Agreement. To Citizen Groups' knowledge, this document and its methodology has never been publicly noticed for comment. We ask that EPA withdraw its approval and accept public comment on this problematic methodology.

² We note that LDEQ's continuous monitoring was not properly conducted, as discussed by Dr. JoAnn Burkholder in the affidavit submitted to EPA. Further, grab sampling ambient monitoring is LDEQ's method for assessing the health of the state's waterbodies, and this data is regularly accepted by the EPA as scientifically valid data. Indeed, the MOA anticipates reliance in part on ambient monitoring data.

In light of this recent monitoring data which contradicts the entire basis for the revision, Citizen Groups request that EPA reconsider its decision and, at a minimum, partially disapprove LDEQ's proposed DO change as it applies to the Little Tchefuncte River, new subsegment 040807. Alternatively, at a minimum, EPA should disapprove Louisiana's subsegment revision whereby it broke out new subsegment 040807 from subsegment 040801 and included 040807 and the eastern LMRAP Ecoregion. The data demonstrate that these two subsegments differ substantially from the LMRAP Ecoregion waterbodies in the most important aspect – water quality. Thank you.

Respectfully submitted by:

s/ Lisa Jordan

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